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SIT KIM HUNG RONNIE v. IAN MICHAEL HAMPTON & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
GAN TECHIONG JC
[CIVIL SUIT NO: WA-23NCvC-1-01-2023]
B 13 FEBRUARY 2024

Abstract – *An application for security for costs by an individual person is governed by O. 23 of the Rules of Court 2012 ('ROC'). In reading O. 23 of the ROC, the word 'ordinarily' in r. 1(a) of O. 23 is construed to mean 'usually', ie, a plaintiff who is usually a resident in a place outside the jurisdiction of this court. The Rule mentioned nothing of the citizenship of a plaintiff. When a plaintiff is 'ordinarily resident out of the jurisdiction' of this court, O. 23 r. 1(a) is inapplicable to him/her.*

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CIVIL PROCEDURE: *Security for costs – Application for – Foreigners husband and wife settled down in Malaysia – Application by husband against wife pursuant to divorce petition – Whether wife ordinarily resident within jurisdiction – Whether 'ordinarily' in O. 23 r. 1(a) of Rules of Court 2012 ('ROC') refers to citizenship of wife – Whether wife's place of residence had usually been matrimonial home in Kuala Lumpur – Whether situation as described in O. 23 r. 1(a), (b), (c) or (d) of ROC exists – Whether application oppressive attempt to stifle wife's claim for financial support – Whether security for costs could be ordered*

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FAMILY LAW: *Divorce – Petition – Foreigners husband and wife settled down in Malaysia – Application for security for costs by husband against wife – Whether wife ordinarily resident within jurisdiction – Whether 'ordinarily' in O. 23 r. 1(a) of Rules of Court 2012 ('ROC') refers to citizenship of wife – Whether wife's place of residence had usually been matrimonial home in Kuala Lumpur – Whether situation as described in O. 23 r. 1(a), (b), (c) or (d) of ROC exists – Whether application oppressive attempt to stifle wife's claim for financial support*

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The plaintiff/wife and the first defendant/husband were both foreigners in Malaysia; the wife being a holder of a Hong Kong passport while her husband holds a United Kingdom passport. The couple was married in Hong Kong, where their first matrimonial home was situated. In 2009, they moved to Malaysia. In 2013, a house located in a lane off Jalan Ampang Hilir in Kuala Lumpur, was purchased and used as their matrimonial home in Malaysia ('matrimonial home'). The plaintiff was suing the first defendant and a firm of solicitors ('second defendant') after having successfully set aside a *decree nisi* made absolute in a 'joint petition'. The plaintiff's alleged cause of action against the defendants was for conspiracy to defraud her of alimony, compensation and/or settlement payable by the first defendant to the plaintiff. The plaintiff denied having any knowledge of the joint divorce petition and averred that her signature as a joint petitioner was forged. The

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second defendant were the solicitors who prepared the 'joint petition' and obtained a *decree nisi* that was made absolute. The plaintiff sought damages for the alleged conspiracy to deprive her of what could have been awarded to her through a unilateral divorce petition. The family court judge ruled in favour of the wife's application and set aside the decree absolute for the divorce. Thus, the plaintiff and the first defendant were still legally married to each other. The first defendant did not appeal against the setting aside of the aforesaid decree in the 'joint petition' and, instead, filed a second petition for divorce – this time a unilateral petition. The first defendant, having unsuccessfully applied to strike out the plaintiff's action in this suit, mounted an application (encl. 36) for security for costs of RM200,000 to be furnished by his wife. The first defendant's application for security for costs was based on his allegations that his wife was not ordinarily a resident in Malaysia and that he might not be able to recover costs from his wife if this civil suit was to be dismissed with costs in the future. The plaintiff's permanent address in Malaysia was still at the matrimonial home and she had not been receiving money from the first defendant for her living expenses in Malaysia.

Held (dismissing first defendant's application with costs):

(1) Order 23 of the Rules of Court 2012 ('ROC'), which was applicable to the first defendant's application, gave the court a much wider discretion. Rules 1(a) to (d) of O. 23 are independent of each other, *ie*, not conjunctive. Rules 1(b), (c) and (d) are applicable to a plaintiff who is ordinarily resident within the jurisdiction, and not just to a plaintiff who is ordinarily resident out of the jurisdiction of the courts in Malaysia. The word 'ordinarily' in r. 1(a) which reads 'ordinarily resident out of the jurisdiction' simply means 'usually'. It refers to a plaintiff who is usually a resident in a place outside the jurisdiction of this court. The rule mentioned nothing about the citizenship of a plaintiff. (paras 14 & 18-20)

(2) The application of O. 23 r. 1 of the ROC is a two-stage inquiry. The first step would be to determine, based on the facts of a particular case, whether the situation as described in rr. 1(a) or (b) or (c) or (d) exists. If the answer is in the negative, the plaintiff's application for security for costs could be dismissed *in limine* forthwith. If any of the situations described is found to exist factually, the second step as provided in r. 1 would come into play: 'having regard to all the circumstances of the case,' whether the court thinks it just to order the plaintiff to give such security for the defendant's costs of the action. The plaintiff was not 'ordinarily resident out of the jurisdiction' of this court, and hence O. 23 r. 1(a) was inapplicable to her. The plaintiff's place of residence had usually been the matrimonial home in Ampang, Kuala Lumpur –

where she lived with her son. The failure of a defendant to cross the first stage of the two-stage inquiry under O. 23 warranted a dismissal of his application for security for costs. (paras 21-23)

(3) The fact that the divorce decree was set aside by the family court was evidence that the plaintiff's claim, that the first defendant was not supporting her financially and had filed a 'joint petition' to divorce her by forging her signature, was *bona fide* and not a sham. In the circumstances, the first defendant's application for security for costs of RM200,000 could be construed as an oppressive attempt to stifle the plaintiff's claim. Further, there were assets within the jurisdiction of this court that could be partially set-off to provide for payment of costs between the couple. (paras 27 & 28)

(4) A judgment of this court is registrable for reciprocal enforcement in Hong Kong, as could be seen in the Foreign Judgments (Reciprocal Enforcement) Order of Hong Kong. The registrability of a judgment of this court in the jurisdiction where a foreign plaintiff owns assets is certainly one of the factors that weighs against ordering security for costs, having regard to all the other circumstances of the case. All the more so in this case, where the plaintiff and the first defendant were both foreigners who were married and lived in Hong Kong before moving their matrimonial home to Malaysia. (para 29)

Case(s) referred to:

Faridah Begum Abdullah v. Dato' Michael Chong [1995] 2 CLJ 951 HC ***(refd)***

Kasturi Palm Products v. Palmex Industries Sdn Bhd [1985] CLJU 149; [1985] 1 LNS 149 HC ***(refd)***

Mahon v. Mahon [1971] CLJU 72; [1971] 1 LNS 72 FC ***(refd)***

Skrine & Co v. Mbf Capital Bhd & Anor & Other Appeals [1998] 3 CLJ 432 CA ***(refd)***

Legislation referred to:

Companies Act 1965 (repealed), s. 351

Companies Act 2016, s. 580A

Rules of Court 2012, O. 23 r. 1(a), (b), (c), (d)

Foreign Judgments (Reciprocal Enforcement) Order [Hong Kong], First Schedule Part 2

For the plaintiff - Law Yoke Kuan; M/s Lum & Partners

For the 1st defendant - Choo Dee Wei & Dickson Loo; M/s Choo Dee Wei

Reported by S Barathi

JUDGMENT

Gan Techiong JC:

Introduction

[1] When marital strife brings on litigation, many ugly allegations appear in the respective pleadings of the man and wife. Such is the situation in this civil suit, wherein the plaintiff is the wife of the first defendant. The subject

matter of this judgment is an application (encl. 36) filed by the first defendant/husband for security for costs of RM200,000 to be given by his wife in this civil suit.

[2] The plaintiff/wife is suing the first defendant/husband and a firm of solicitors (the second defendant) after having successfully set aside a *decree nisi* made absolute in a "joint petition" filed at the family division of this court at Kuala Lumpur. I have stated "joint petition" in inverted commas because the plaintiff/wife here denied having any knowledge of Joint Divorce Petition No. WA-33JP-2100-12-2017 and averred that her signature as a joint petitioner was forged. On 25 April 2022, the learned family court judge ruled in favour of the wife's application and set aside the decree absolute for the divorce. Thus, the plaintiff and the first defendant are still legally married to each other.

[3] The first defendant/husband did not appeal against the setting aside of the aforesaid decree in the "joint petition". Instead, he has filed a second petition for divorce – this time a unilateral petition. According to both counsels, the man and wife are still battling it out in the family court, with no end in sight yet.

[4] It is also noteworthy that the first defendant/husband had in fact applied to strike out the plaintiff/wife's action in this civil suit, and that his application (encl. 19) was dismissed with costs by my predecessor (Justice Rozana Yusoff) on 4 August 2023. The first defendant/husband then mounted his said application (encl. 36) for security for costs to be furnished by his wife.

[5] In most cases, a marital dispute between a wife and her husband should be heard by the family court. However, in this case, the plaintiff/wife's alleged cause of action against her husband and the second defendant is for conspiracy to defraud her of "alimony, compensation and/or settlement payable by the first defendant to the plaintiff". The plaintiff is alleging that the defendants conspired to forge her signature in a joint divorce petition and other cause papers to deceive the family court judge into believing that she had agreed to the terms therein.

[6] The second defendant were the solicitors who prepared the "joint petition" and obtained a *decree nisi* that was made absolute. The plaintiff is seeking damages for the alleged conspiracy to deprive her of what could have been awarded to her through a unilateral divorce petition. Such a cause of action, founded in tort, is appropriate to be filed as a civil suit in the civil division of this court.

Undisputed Facts

[7] The plaintiff/wife and the first defendant/husband are both foreigners in Malaysia; the wife being a holder of a Hong Kong passport while her husband holds a United Kingdom passport.

[8] The couple was married in Hong Kong on 31 January 1996, where their first matrimonial home was situated. Some 15 years ago, in 2009, they moved to Malaysia. In 2013, a house located in a lane off Jalan Ampang Hilir in Kuala Lumpur, was purchased and used as their matrimonial home in Malaysia ("the matrimonial home").

[9] Their son, Andrew, went to school in Kuala Lumpur, and as at the date of filing of this civil suit, he was still a student in Malaysia under the care of the plaintiff. The plaintiff's permanent address in Malaysia is still at the matrimonial home.

[10] The plaintiff/wife has not been receiving money from the first defendant/husband for her living expenses in Malaysia and has been supported by funds from her relatives in Hong Kong.

The Gist Of The First Defendant/Husband's Submissions

[11] The first defendant/husband's application to require his wife to give security for costs of RM200,000 was based on his following averments:

(i) the plaintiff's immigration status in Malaysia is temporary;

(ii) the plaintiff's lack of assets in Malaysia;

(iii) the plaintiff's unemployment and lack of income;

(iv) the plaintiff's outstanding debts.

[12] The whole basis of the first defendant/husband's application for security for costs of RM200,000 was based on his allegations that his wife is not ordinarily a resident in Malaysia and that he might not be able to recover costs from his wife if this civil suit is to be dismissed with costs in the future.

The Gist Of The Plaintiff/Wife's Submissions

[13] The plaintiff's grounds for objecting to her husband's said application could be summarised as follows:

(i) the first defendant's application for security for costs was not filed promptly, and was an afterthought after the dismissal of his striking-out application;

(ii) her current predicament was caused by the defendants and she is a victim of the fraud committed by the defendants, and is bringing this civil suit to seek justice;

(iii) the first defendant has filed his application for security for costs of RM200,000 with a *mala fide* intention of stifling her claim, in order to deny her access to justice;

(iv) she was shocked to discover that a divorce decree had been issued by the family court in a "joint petition" for divorce that was filed upon the instructions of the first defendant with her signature being forged on the "joint petition" and other documents;

(v) she had to undergo much mental agony to have been 'divorced' without her knowledge, and had incurred loss and damage in fighting to have the divorce decree set aside, *inter alia*, procuring the services of a professional document examiner to prepare a report regarding her "forged signatures";

(vi) after the family division of this court decided in her favour and ordered the impugned divorce decree to be set aside, she is of the view that she has a strong case to seek compensation and other reliefs from the first defendant and second defendant who filed the "joint petition" – for conspiracy to defraud her, *et cetera*.

Analysis Of The Facts And Law On Security For Costs

[14] Both learned counsels had cited several authorities to support their respective submissions regarding the first defendant's application. Both counsels are in agreement that the applicable rule is O. 23 of the Rules of Court 2012.

[15] As some of the authorities on security for costs were regarding applications under the Companies Act for security for costs against limited companies, I shall endeavour to point out the differences between s. 580A of the Companies Act 2016 (formerly in s. 351 of the Companies Act 1965) and O. 23 of the Rules of Court 2012 because I am of the view that since the plaintiff is an individual person and not a company under the Companies Act, only the authorities on O. 23 are applicable.

[16] The fact that an application for security for costs under the Companies Act is concerned solely with the ability of a company to pay costs to a successful defendant, was highlighted by the Court of Appeal in *Skrine & Co v. Mbf Capital Bhd & Anor & Other Appeals* [1998] 3 CLJ 432; [1998] 3 MLJ 649, at p. 444 (CLJ); p. 657 (MLJ) thereof:

> In order to appreciate the arguments of counsel in support of these appeals, it is necessary to hearken to the statutory provision under which the applications were made. It is **s. 351(1) of the Companies Act 1965** which reads:
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> > Where a company is plaintiff in any action or other legal proceeding the court having jurisdiction in the matter may, if it appears **by credible testimony** that there is **reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence,** require sufficient security to be given for those costs and stay all proceedings until the security is given.

A As may be seen; and this is borne out by the authorities decided upon the parallel provisions in other common law jurisdictions; the section provides for a two-stage inquiry in the process of arriving at the conclusion as to whether security for costs should be awarded in a particular case in which the plaintiff is a company. **The first step** is for the court hearing an application in this regard **to determine whether there is credible evidence.**
B The **second step** is to ascertain **whether that evidence,** when found to be credible, **supports the belief that the company will be unable to pay the costs of a successful defendant.** (emphasis added)

[17] The Court of Appeal in *Skrine v. Mbf Capital Bhd* (*supra*) described the hearing of an application for security for costs under s. 351 of the Companies
C Act 1965 (currently s. 580A of the CA 2016) as a two-stage inquiry. As could be seen, that statutory provision is solely about the ability of a company to pay costs to a successful defendant. This, in my view, is a necessary provision to ensure that companies with a minimal paid-up capital do not abuse the process of court and avoid paying costs when their claims are
D dismissed – bearing in mind that a limited company enjoys the legal privilege of limited liability, and it is not uncommon in Malaysia for a company with just RM2 paid-up capital to operate businesses by using loans from its directors and shareholders.

[18] In contrast to s. 580A of the Companies Act 2016, O. 23 r. 1 of the
E RC 2012 – which is applicable to the first defendant's application – gives the court a much wider discretion. It reads:

> Where, on the application of a defendant to an action or other proceedings in the Court, **it appears to the Court** –
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> F (a) that **the plaintiff is ordinarily resident out of** the jurisdiction;
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> (b) that **the plaintiff** (not being a plaintiff who is suing in a representative capacity) **is a nominal plaintiff** who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so;
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> (c) subject to paragraph (2), that **the plaintiff's address is not stated in the writ** or originating summons or is incorrectly stated therein; or
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> (d) that the plaintiff has *changed his address* during the course of the proceedings **with a view to evading the consequences of the litigation,**
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> then, if, **having regard to all the circumstances of the case, the Court thinks it just to do**, it may order the plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just. (emphasis added)

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[19] Rules 1(a) to (d) of O. 23 are independent of each other, *ie*, not conjunctive. Rules 1(b), (c) and (d) are applicable to a plaintiff who is ordinarily resident in the jurisdiction. Rule 1(b) refers to a nominal plaintiff who is "suing for the benefit of some other person", and presumably, the

nominal plaintiff is a 'man of straw' who has no money to pay costs if his action is dismissed. Likewise, rr. 1(c) and (d) respectively refer to a plaintiff who is evasive – in failing to state his address or deliberately stating a wrong address in the writ and one who changes his address midway "with a view to evading the consequences of the litigation", *ie*, a plaintiff with the intention of disappearing without paying costs if his action is dismissed by the court. It must be emphasised that rr. 1(b), (c) and (d) are applicable to a plaintiff who is ordinarily resident within the jurisdiction, and not just to a plaintiff who is ordinarily resident out of the jurisdiction of our courts in Malaysia.

[20] The word "ordinarily" in r. 1(a) which reads "ordinarily resident out of the jurisdiction" simply means "usually". In layman terms, it refers to a plaintiff who is usually a resident in a place outside the jurisdiction of this court. If the purpose of O. 23 is to require plaintiffs who are foreign citizens suing a citizen of Malaysia to give security for costs of his action, the rule could have simply said so. The said rule mentioned nothing about the citizenship of a plaintiff.

[21] Based on the wording of O. 23 r. 1 of the RC 2012, I am of the view that the application of O. 23 is also a two-stage inquiry. The first step would be to determine, based on the facts of a particular case, whether the situation as described in rr. 1(a) or (b) or (c) or (d) exists. If the answer is in the negative, the plaintiff's application for security for costs could be dismissed *in limine* forthwith. If any of the situations described is found to exist factually, the second step as provided in r. 1 would come into play: "having regard to all the circumstances of the case," whether the court thinks it just to order the plaintiff to give such security for the defendant's costs of the action.

[22] Based on the law and undisputed facts cited in paras. [8] and [9] above, I found that the plaintiff is not "ordinarily resident out of the jurisdiction" of this court, and hence O. 23 r. 1(a) is inapplicable to her. The plaintiff's place of residence has usually been the matrimonial home in Ampang, Kuala Lumpur – where she lives with her son, Andrew. In coming to this finding, I was guided by the judgment of our Federal Court in *Mahon v. Mahon* [1971] CLJU 72; [1971] 1 LNS 72; [1971] 2 MLJ 266, which held that a foreign wife who had her matrimonial home with her husband in Malaya was to be regarded as "ordinarily resident" here. It was held as follows:

> With respect I think the learned judge appears to have overlooked the fact that immediately *after their marriage in Ireland on July 4, 1955 the parties left for Malaya and have for the past 15 years had their matrimonial home in the Federation. In the circumstances there can be no doubt that the petitioner has been "ordinarily resident" in the Federation since 1955.* As Viscount Cave, L.C. said in *Levene v. Commissioners of Inland Revenue* [1928] AC 217 222:

> The word 'reside' is a familiar English word and is defined in the Oxford English Dictionary as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place.'
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> In most cases there is no difficulty in determining *where a man has his settled or usual abode,* and if that is ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure. Thus, *a master mariner who had his home at Glasgow* where his wife and family lived, and to which he returned during the intervals between his sea voyages, *was held to reside there, although he actually spent the greater part of the year at sea.* (emphasis added)

[23] Further, the first defendant/husband had found it fit to file a unilateral petition at the family division of this court to divorce the plaintiff – further fortifying my finding that they share a matrimonial home in Malaysia. As explained above, the failure of a defendant to cross the first stage of the two-stage inquiry under O. 23 warrants a dismissal of his application. Based on my finding that the plaintiff is not "ordinarily resident out of the jurisdiction" of this court, the first defendant's application for security for costs, which was filed pursuant to O. 23 r. 1(a), must fail. Be that as it may, I shall proceed to consider the circumstances of this case because even if the plaintiff is to be regarded as someone ordinarily resident out of the jurisdiction, I would still have dismissed the first defendant's application. My reasons are as follows.

[24] The courts in Malaysia have been consistent in holding that "Security cannot now be ordered as of course from a foreign plaintiff, but only if the court thinks it just to order such security in the circumstances of the case." In *Kasturi Palm Products v. Palmex Industries Sdn Bhd* [1985] CLJU 149; [1985] 1 LNS 149; [1986] 2 MLJ 310, Dzaiddin J (as this former Chief Justice then was) emphasised the discretion vested upon the court in hearing such applications. It was held:

> Order 23 Rule 1(i) provides that the Court may order security for costs **"if, having regard to all the circumstances of the case, the Court thinks it just to do so."** These words have the effect of conferring upon the Court the real discretion and indeed the Court is bound, by virtue thereof, to consider the circumstances of each case, and in the light thereof to determine whether and to what extent or for what amount a plaintiff may be ordered to provide security for costs. **It is no longer, for example, an inflexible or rigid rule that a plaintiff resident abroad should provide security for costs.** (Supreme Court Practice 1985 Vol. 1 p. 384). In exercising its discretion, it is clear that the Court will have regard to all the circumstances of the case. (emphasis added)

[25] The words of Dzaiddin J in *Kasturi Palm Products* were cited with approval by Arifin Zakaria J (as this other former Chief Justice then was) in *Faridah Begum Abdullah v. Dato' Michael Chong* [1995] 2 CLJ 951; [1995] 2 MLJ 404, as follows:

> Security cannot now be ordered as of course from a foreign plaintiff, but only if the court thinks it just to order such security in the circumstances of the case. This statement of the law was approved and adopted by Mohamed Dzaiddin J (as he then was) in *Kasturi Palm Products v. Palmex Industries Sdn Bhd* [1986] 2 MLJ 310. Some indication of the relevant circumstances to be considered may be drawn from what was said by Lord Denning MR in *Sir Lindsay Parkinson & Co Ltd v. Triplan Ltd* [1973] QB 609 at p 626; [1973] 2 All ER 273 at pp 285-286; [1973] 2 WLR 632 at p 646 wherein he said:
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> > *The court has a discretion which it will exercise considering all the circumstances of the particular case.* So I turn to consider the circumstances. Counsel for Triplan helpfully suggests *some of the matters which the court might take into account, such as whether the company's claim is bona fide and not a sham and whether the company has a reasonably good prospect of success.* Again it will consider whether there is an admission by the defendants on the pleadings or elsewhere that money is due. If there was a payment into court of a substantial sum of money (not merely a payment into court to get rid of a nuisance claim), that too would count. *The court might also consider whether the application for security was being used oppressively – so as to try to stifle a genuine claim. It would also consider whether the company's want of means has been brought about by any conduct of the defendants,* such as delay in payment or delay in doing their part of the work. (emphasis added)

[26] Arifin Zakaria J (as the former Chief Justice then was) went on in *Faridah Begum* (*supra*) to hold that the impecuniosity of a plaintiff is not a sufficient ground to order security for costs. He opined as follows:

> However, **the plaintiff's impecuniosity by itself** is **not a sufficient ground** for me to make the order for security for costs. As said by the Bingham LJ in *Thune & Anor v. London Properties Ltd & Ors* [1990] 1 All ER 972 at p 979; [1990] 1 WLR 562 at pp 571-572:
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> > In approaching that question it cannot be too emphatically stated that impecuniosity of a personal plaintiff is never of itself enough to confer on the court a discretion to order security. (emphasis added)

[27] In our present case, the plaintiff has pleaded that the first defendant/husband was not supporting her financially, and had filed a "joint petition" to divorce her by forging her signature. The fact that the divorce decree was set aside by the family court is evidence that her claim is *bona fide* and not a sham, *ie*, it ought to go for trial when witnesses would be cross-examined

under oath. In the circumstances, I am of the view that the first defendant/husband's application for security for costs of RM200,000 could, in the circumstances, be construed as an oppressive attempt to stifle the plaintiff/wife's claim.

[28] I had also taken into consideration the fact that being man and wife, there would, on a balance of probabilities, be matrimonial assets to be divided pursuant to their ongoing divorce proceedings under the unilateral petition, for example, the matrimonial home in Kuala Lumpur and their assets in Hong Kong – where they married and lived for a few years before moving to Malaysia. In other words, there are assets within the jurisdiction of this court that could be partially set-off to provide for payment of costs (if any) between this couple.

[29] Since there is a further possibility of the first defendant enforcing an order for costs (if any such order is made in his favour in the future), it was relevant for me to note that though Hong Kong has become part of the People's Republic of China as from July 1997, a judgment of this court remains registrable for reciprocal enforcement in Hong Kong. This could be seen in the Foreign Judgments (Reciprocal Enforcement) Order of Hong Kong wherein "Malaysia" is specified in Part 2 of the First Schedule of the said Order, and this court (the High Court) satisfies the definition of a court "having unlimited jurisdiction in civil and criminal matters", and therefore its judgments are recognised in Hong Kong for registration and enforcement purposes there. The registrability of a judgment of this court in the jurisdiction where a foreign plaintiff owns assets is certainly one of the factors that weighs against ordering security for costs, having regard to all the other circumstances of the case. All the more so in this case, where the plaintiff and the first defendant are both foreigners who married and lived in Hong Kong before moving their matrimonial home to Malaysia.

[30] I repeat my finding of fact that the plaintiff, who is still staying in the matrimonial home in Malaysia, is not ordinarily resident out of the jurisdiction of this court. It is my judgment that even if she is ordinarily resident out of the jurisdiction of this court, "having regard to all the circumstances of the case" (applying O. 23 r. 1) as discussed above, I would still order the first defendant/husband's application for security for costs of RM200,000 to be dismissed. The first defendant's application (encl. 36) was therefore dismissed with costs of RM5,000.